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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 002545

SIPDIS

STATE FOR NEA-I (PLEASE PASS TO LISA GROSH, OFFICE OF LEGAL ADVISER)

E.O. 12958: DECL: 08/03/2018

TAGS: PGOV PREL PTER I2

SUBJECT: LEGAL CLAIMS AGAINST IRAQI ASSETS: WHAT NOW?

Classified By: Economic Minister Counselor Charles Ries. Reasons 1.4 (b,d).

SUMMARY

¶1. (C) An interagency team led by Principal Deputy Legal Adviser Joan Donoghue traveled to Baghdad July 18-24 to discuss with GOI officials the protection of Iraq's assets, the settlement of Iraq's remaining Saddam-era debt and commercial claims, and the resolution of Saddam-era personal injury suits against Iraq in US courts. The USG team shared its perspective on these legally and politically complex issues, listened to the GOI's concerns, and discussed possible solutions. The USG team explained that Iraq's assets in the United States are well protected under current US law, but urged the GOI, with its US counsel, to comprehensively assess claims against Iraq in the United States (and elsewhere), with a view toward expeditiously resolving outstanding claims. GOI officials generally demonstrated a sophisticated understanding of the legal and political issues, and several supported the creation of a ministerial committee to study and help resolve them. End Summary.

PRINCIPAL DEPUTY LEGAL ADVISER MEETS WITH SENIOR GOI OFFICIALS

¶2. (SBU) At the Embassy's request, the Principal Deputy Legal Adviser (PDLA) and an interagency team (comprising Acting Assistant Legal Adviser for International Claims Lisa Grosh, Attorney-Adviser Mary Mitchell, and, from Treasury, Acting Director of International Debt Policy Anthony Marcus) traveled to Baghdad July 18-24 to discuss with senior GOI officials the protection of Iraq's assets, the resolution of Saddam-era personal injury cases in US courts and the settlement of Iraq's remaining Saddam-era commercial and sovereign debt. The USG team, accompanied at times by EMIN and Embassy Legal Adviser, met with Dr. Aziz Jaafar, Advisor to the Minister of Finance; Dr. Sinan Al-Shabibi, Governor of the Central Bank of Iraq; Husayn al-Shahristani, Minister of Oil; Barham Salih, Deputy Prime Minister; Dr. Mohammad Hamoud, Deputy Foreign Minister; Dr. Fadel Jawad Kadhum, Legal Advisor to the Prime Minister; Dr. Ibrahim Posho, Deputy Minister of Justice; and Sheikh Humam Hamoudi, Chairman of the Council of Representatives' International Relations Committee.

BACKGROUND

¶3. (C) Iraq has made some progress in addressing Saddam-era commercial and sovereign debt, although more remains to be done. Iraq will need to decide whether to seek post-2008

United Nations Security Council resolution protection of its assets. As part of making a case for that protection, the GOI would need to explain its plan for managing Saddam-era cases that pose risks to its assets and to articulate why immunity is still required. In addition, victims of terrorism have sued Iraq in US courts for acts committed during the Saddam era, under a law that applies to certain acts committed while the foreign state was on the US list of state sponsors of terrorism. These victims, however, have not been able to attach Iraq's assets. Currently, several layers of legal protection apply to GOI assets in the United States, including:

- A United Nations Security Council resolution (UNSCR), which provides worldwide legal protection for the Development Fund for Iraq (DFI) and Iraq's oil revenues;
- An Executive Order, which implements the UNSCR and also provides total protection in the United States for the assets of the Central Bank of Iraq (CBI); and
- The 1976 Foreign Sovereign Immunities Act (FSIA), which, among other things, provides broad immunities to state assets in the United States and accords special protection to foreign central bank assets. As a result of the President's waiver of a provision known as the "Lautenberg Amendment" or "section 1083," Iraq's assets receive more protection from attachment in litigation brought by victims of terrorism than do the assets of other current or former "state sponsors of terrorism."

Although these protections currently apply to Iraq's assets, plaintiffs and their supporters in Congress will continue to seek to change the law until these claims are paid.

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Accordingly, PDLA Donoghue expressed the Department's view, which is consistent with the sense of Congress in granting the President the authority to waive section 1083 for Iraq, that it is advisable for the GOI to resolve these claims expeditiously. The delegation also indicated that it was important to resolve remaining commercial cases, particularly those relating to loans for which the CBI waived its immunity, as these could threaten CBI assets if the Executive Order protection were ever lifted and would in any case restrict the freedom of the CBI to manage its affairs.

POSSIBLE SOLUTIONS

¶4. (C) In her meetings with the GOI, PDLA Donoghue emphasized the need for a comprehensive GOI strategy to deal with these cases. She urged the GOI to retain experienced counsel who can advise on all aspects of the cases, including the US legislative angle. In response to questions concerning how Iraq might resolve these claims, PDLA Donoghue offered three possibilities:

- The GOI and its counsel could seek to resolve each case individually. This option, PDLA Donoghue explained, would enable the parties to settle confidentially any claims that they agreed not to litigate;
- The GOI or the claimants could request the State Department's good offices, to help facilitate the settlement of cases, either individually or collectively;
- The GOI and the USG could explore the option of settling the claims on a government-to-government basis, through an international agreement. For such agreement to withstand scrutiny in US courts and the Congress, it would have to meet certain conditions that the two governments could discuss. Importantly, the US and Iraq would have to establish an effective alternative mechanism to compensate plaintiffs for their injuries.

SOME GOI OFFICIALS RECOGNIZE THE NEED TO SETTLE...

¶5. (C) Some GOI officials viewed the settlement of Saddam-era

claims as a cost to be monetized and paid, so that the GOI can conduct business internationally without constantly worrying about its assets being attached. Oil Minister Shahristani, for instance, stated that the GOI needs to pay compensation and "close this chapter." CBI Governor Shabibi agreed, noting that Iraq wants to be a "normal country," with "normal trade relations."

¶6. (C) To that end, some favored a state-to-state settlement of the outstanding claims. Minister Shahristani, for instance, appeared to favor this approach, indicating that COR approval of any such settlement would not pose an insurmountable obstacle.

... WHILE OTHERS APPEAR LESS WILLING

¶7. (C) Other GOI officials, by contrast, argued that it would be politically infeasible, as well as unfair, to require Iraq to settle with US plaintiffs for wrongs committed by the Saddam regime. The MOF's Dr. Aziz, for instance, stated that US plaintiffs suffered far less than the millions of Iraqis who lost their lives, property, land, or livelihoods during the Saddam era, and yet no one will compensate them or their families. Iraq, he added, will have to spend vast sums over many decades to rebuild an economy, infrastructure, and society decimated by Saddam. Even though Dr. Aziz played a key role in settlement of Saddam-era commercial and bilateral debts, he would not accept that there was any parallel in the GOI's accepting that it was the legal successor to the Saddam regime in those contexts.

¶8. (C) DPM Barham worried that publicly settling with US plaintiffs would "open the gates of hell" to further lawsuits from around the world. The PM's legal advisor, Dr. Fadel, also worried that settling cases would free "everyone to sue Iraq in US courts," and he strongly criticized a legal system that allows plaintiffs to claim such "outrageous" sums.

OTHER SUGGESTIONS

¶9. (C) Some GOI officials expressed a preference for extending beyond 2008 the UNSCR protections for the DFI and

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Iraqi oil revenues. Dr. Aziz claimed that an extension until 2011 would give the GOI sufficient time to sort out remaining debt issues and uncover remaining claims. Minister Shahristani took the same view, although he thought that a one-year extension would suffice.

¶10. (C) Some asked that the Administration eliminate the terrorism-related cases from US courts. Dr. Aziz, for example, noted the instrumental role the USG played in helping negotiate a reduction in Iraq's \$60-billion Paris Club debt, and he requested similar USG assistance in eliminating the terrorism cases. (Comment: The comparison was somewhat puzzling, in that the Paris Club agreement does require Iraq to make significant payments to creditors over time. End Comment.)

¶11. (C) Some suggested that Iraq should consider withdrawing its money from the US. Drs. Fadel and Aziz, for instance, expressed concern that Iraq faces claims in excess of a trillion dollars in the United States, an amount far exceeding the CBI and DFI assets in the New York Fed. Dr. Aziz suggested that it would be safest for Iraq to withdraw its funds from the US altogether. Dr. Fadel added: "You are forcing us to take our money out of the United States."

GOI TO CONTINUE DISCUSSIONS INTERNALLY, WITH USG

¶12. (C) Several officials acknowledged the GOI's need to approach this problem collectively and to continue

discussions with the USG. Minister Shahristani, for instance, stated that he would raise these issues with the PM and other key ministers. Deputy Minister of Justice Posho similarly offered to brief the Minister of Justice and to recommend the formation of a ministerial committee to investigate the problem. Dr. Fadel stated that he would raise the issue with the PM. (Comment: Notably, following meetings with Dr. Aziz and Governor Shabibi, the two attended the USG team's later meeting with DPM Barham. This offered the USG team an opportunity to ensure that key officials received the same USG message, and it suggests that GOI officials already have begun internal discussions on this issue. End Comment.)

COMMENT

¶13. (C) GOI officials generally demonstrated a keen understanding of the complex legal and political issues at play in the terrorism-related cases in the US, and many appeared interested in trying to find a practical solution. It was not clear, however, that the GOI officials viewed these issues as ones requiring immediate attention, in view of other priorities. The USG interagency team expressed its willingness to resume discussions with the GOI or its counsel, and to provide further assistance that may be required. We also will continue to engage the GOI on these issues. End Comment.

¶14. (U) PDLA Donoghue cleared this cable.

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